

Consumer Electronics Retailers Coalition



Summary – Statement for CERC of W. Alan McCollough, Chairman & CEO, Circuit City Stores, Inc.

Digital television broadcasting is a final piece of the digital transition. The single best thing that the Congress can do is to set an unambiguous transition date. We cannot truthfully tell consumers that “analog” products will stop working on any particular date when, for most actual consumer uses, they will not. CERC supports a “hard” transition date and consumer advisories.

12-31-08 “Hard Date.” The key factor is that the date be *reliable and unconditional*. Once the date is clearly and reliably set, we and our vendors can start advising consumers that, on a specific future date, those who rely on analog signals from an antenna will need to find alternatives.

Product Advisory Label. Too verbose a label will not be read by consumers. CERC suggests a more concise formulation: **Notice: This TV has only an 'analog' broadcast tuner so will require a converter box after [date] to receive over-the-air broadcasts with an antenna, because of the transition to digital broadcasting on that date. (It should continue to work as before with cable and satellite TV systems, gaming consoles, VCRs, DVD players, and similar products.)** Internet-based merchants should have equivalent obligations.

Obligations On Other Industries. CERC supports the provisions that would oblige broadcasters finally to make consumers aware of their digital channels and of the Transition.

Provisions Re “Tuner Mandate.” Government mandates that try to force *all* shoppers to buy features that many or most do not need tend to be *counterproductive* to the Transition. The Staff Draft’s Tuner Mandate provisions may:

- drive the market toward products with *no off-air tuners at all*;
- deny products to those consumers *least able* to afford television receivers by more than *doubling* the cost of 13 inch receivers and generally putting the costs on those who can least afford them;
- *detract from* the Draft’s provisions that recognize cable headend conversion to analog transmission as meeting Transition requirements.

Consumer Subsidies. While consumer choice should be the driver of lower prices, budget constraints may require that the functionality of subsidized devices be severely limited. We have these concerns:

- Any subsidy should flow directly from the government to eligible consumers. CERC would have severe concerns over a subsidy program that would require retailers to advance the subsidy amount to consumers, and to attempt to recover it from the government. Any such retailer reimbursement program would need to be a direct obligation of the U.S. government for each sale of a specified product, payable within 60 days of claim and subject to suit for nonpayment.
- Even so, imponderable questions would abound: How to prevent false claims? Would all retailers, of any size, be audited regularly by the government? How to apply the program to Internet-based merchants; how to find them to audit the *bona fides* of their claims for reimbursement? The result may be either loss of credibility for *all* claims, or government and retail auditing costs that are dramatically out of all scale to the amounts being claimed. Reimbursement for “costs” would thus be a quandary. No “subsidy” program should involve government attempts to fix or administer prices.

Testimony of
W. Alan McCollough
Chairman & Chief Executive Officer
Circuit City Stores, Inc.

Before the
Subcommittee on Telecommunications and the Internet
House Energy and Commerce Committee

“Legislative Hearing On The Staff Draft
DTV Transition Act of 2005”

May 26, 2005

I am pleased to be here today on behalf of the Consumer Electronics Retailers Coalition (“CERC”) to discuss the digital television transition, and the draft legislation prepared by Chairman Upton’s staff. Consumer electronics retailers have been involved in the transition to digital techniques since 1985, when they helped introduce the digital audio Compact Disc. We agree that, two decades later, it is high time to complete this transition. The single most effective thing that you can do is to set a clear, definite, unconditional date for the cessation of analog broadcasts. On behalf of CERC I applaud this Committee for taking the initiative to do precisely this, and pledge our support to making this happen. Once you take this key step, the marketplace can and should be the main driver for helping all the other pieces fall into place. Setting a firm date, and then relying primarily on the marketplace, is the best way to avoid the costs of the transition from being put on our customers who are least able to bear them.

CERC includes, in addition to Circuit City, specialist retailers Best Buy, RadioShack, and Tweeter, and general retailers Target and Wal-Mart. The three major retail associations – the North American Retail Dealers Association, the National Retail Federation, and the Retail Industry Leaders Association, are also members.

As Len Roberts of RadioShack discussed with this Subcommittee on March 10, the fact that digital broadcasting is a final piece of the digital transition makes explaining it to consumers a rather complex proposition, because so many familiar products and techniques are *already* digital. Product developers have worked to help “analog” and “digital” products work together seamlessly in consumers’ homes – so we cannot truthfully tell consumers that “analog” products will stop working on any particular date, because for most purposes, for most consumers, they will continue to work just fine. CERC and its members have been pleased to work with the majority and minority staffs on these complex issues.

December 31, 2008 Cessation Of Analog Television Broadcasts

CERC has long favored a “hard” and unconditional date for moving exclusively to digital terrestrial broadcasts. In light of the complex budgetary and other factors involved, we have not presumed to tell the Congress what that date should be. The key factor, from our perspective, is that the date be ***reliable and unconditional***, so that if we tell consumers that analog terrestrial broadcasting via an antenna will not be delivered after that date, it will be a truthful statement. We do not want to be in the position of telling customers to buy or not to buy products based on inaccurate or unverifiable information.

Once the transition date is clearly and reliably set, we and our vendors can start advising consumers that, on a specific future date, they will need to rely on alternatives to receiving analog signals from an antenna. Speaking for Circuit City, we would expect to begin this education process as soon as Congress sets the date – whether or not we have been legally mandated to do so.

Text And Placement Of Label For TV Receivers Lacking Digital Tuners

CERC members have continually updated their consumer information, in our product displays, advertising, and websites, to explain to consumers the sometimes dizzying array of choices in this transitional environment. (A list of some of the product / interface / service choices that consumers face was contained in Len Roberts' March 10 written testimony to this Subcommittee.) We have also worked with the FCC on its Digital Transition program. The CERC website, and those of my company and some other CERC members, contain the "DTV Tip Sheet" that we jointly developed with the Consumer Electronics Association ("CEA") and the FCC. We also are engaged, at the FCC's request, in distributing hundreds of thousands of these DTV Tip Sheets to our retail stores. CERC also has endorsed mandatory product labeling once a reliable Transition Date has been set. We have the following comments on the Staff Draft's language that provides for such a label:

Text. We think it is important that the label be as concise as possible, while not misleading the consumer or unnecessarily driving him or her to more expensive products. Based on our experience as retailers, ***we are concerned that too long a label will not be read by many consumers.*** We are accustomed to making complex "forward looking statements" for financial reporting purposes. Our information to consumers, however, needs to be keyed to non-specialists.

While the label text contained in the Staff Draft is accurate, in our experience it is a bit too long to be understood at a glance. We want it to be readily understood when placed on or near a product on a retail shelf. So, if there is to be a mandated retail label, CERC suggests a more concise formulation that is equally accurate, but that consumers would be more likely to read and understand:

Notice: This TV has only an 'analog' broadcast tuner so will require a converter box after [date] to receive over-the-air broadcasts with an antenna, because of the transition to digital broadcasting on that date. (It should continue to work as before with cable and satellite TV systems, gaming consoles, VCRs, DVD players, and similar products.)

Placement. CERC advised this Subcommittee on March 10 that a mandatory product label will be appropriate once an unconditional transition date has been set. We have suggested to your staff that the label should be packed with or affixed to the television receiver, so a retailer would have the choice of leaving the label on the set for shelf display, or moving it to the vicinity of the set (so as not to cover the screen). We also suggested that the label be printed on the outside of boxes. The Staff Draft is generally in accord with our ideas:

- We agree that the labels should be packed with the covered TV receivers, to reduce uncertainty and to avoid mistakes, at retail, about the products to which the labels apply. To avoid screen damage upon removal by a retailer or consumer, the label should not necessarily have to be “on the screen” so long as it is attached to the product as shipped.
- The Staff Draft might be clarified to assure that a retailer would comply with the requirement if it either leaves the label on the product for shelf display, or moves this label to *the vicinity*¹ of the point of product display. If a label is affixed to a screen, it should not necessarily have to remain there, as this could make it difficult for consumers to compare products.
- As the Staff Draft provides, the label text should also be printed on the outside of the retail boxes for the products to which it applies, because some retailers display TV products *only* in the closed boxes. Requiring that these boxes be opened could lessen a consumer’s confidence that he or she is receiving a factory-fresh product.
- We believe that Internet-based sellers (including our own sites) should have equivalent “labeling” obligations at their own “point of display” for the product, or, if there is no “display,” at the point of sale.

¹ CERC believes that a display requirement of a label “in the vicinity” of the product on the shelf is more realistic than the “adjacent to” language of the Staff Draft – depending on how “adjacent” is interpreted, this might not be possible without blocking other important information or features of the product or of another product on display.

Obligations On Other Industries

CERC supports the provisions that would oblige broadcasters to make consumers aware of their digital channels and of the Transition. CERC, like CEA, has been disappointed with the total lack of effort on the part of broadcasters to educate the consumer about the DTV Transition. Instead, broadcasters have chosen to engage in distorting the truth in newspaper advertisements, further confusing the public about the transition. To say, or even to imply, that viewers would necessarily have to buy a new TV receiver after the transition date is simply untrue. As retailers we would like to sell everyone a new TV. We would also like to sell anyone who buys a TV one that has a DTV tuner in it. These are more expensive products and we love to sell them. As retailers in perhaps the most competitive market on earth, however, we must sell consumers what they want and what they need. And we must be honest about how these products will and will not serve consumers in the future.

For our own public education efforts, the key factor is being able to give consumers a clear, reliable date, as of which we can tell them that feature X will no longer work, but feature Y will. Broadcasters already are airing their digital channels, but not at full power. They are not conspicuously promoting these channels. It is in our interest to sell products with DTV tuners, but we need help from the broadcasters in interesting our customers in buying them.

Provisions Re “Tuner Mandate”

CERC understands the desire to get more DTV tuners into consumers’ hands. We also deal every day, however, with the harsh laws of supply and demand. Thus far, under the FCC’s “Tuner Mandate” regime, our experience has been that a government mandate trying to force *all* shoppers to buy features that many or most do not in fact need can be *counterproductive* to the success of the Transition. We therefore caution against trying, in this legislation, to use a

government mandate rather than the “hard date” itself as the main instrument for influencing supply and demand. In particular, we are concerned about the potential marketplace effects of some of the Draft’s provisions:

- They will likely drive the market toward products with *no off-air tuners at all*;
- They will deny useful products to those consumers *least able* to afford television receivers; and
- They seem inconsistent with, and detract from, the Draft’s provisions that recognize cable headend conversion to analog transmission as meeting Transition requirements.

The FCC’s Tuner Mandate has proved a fragile instrument for driving the television receiver market toward the inclusion of DTV tuners. We have found the mandate to equip 50 percent of all displays of 36 inches and above with digital tuners to be counterproductive. By rationing the ultimate supply of products *without* such tuners, it has encouraged retailers to secure their supplies by ordering these products up front, and to await price cuts on the products that contain tuners, because manufacturers will be required to sell these whether or not there is a demand for them. Such demand will be limited because, while many consumers may need or want terrestrial tuners in their displays, most of our customers are cable and satellite subscribers who might not need or want to pay for a broadcast tuner.

Even the requirement that 100 percent of a size category of television receivers must include DTV tuners can have only limited impact on consumer choices, because not all video display products are “television receivers.”² In an era in which more than 85 percent of

² A “Television Receiver” is a product having an off-air broadcast tuner and antenna terminals. The Tuner Mandate requires only that products with analog off-air tuners must have digital off-air tuners as well. A consumer display product, such as a PC monitor, may have a variety of interfaces to accept both analog and digital television signals from cable, satellite, or other set-top boxes, yet lack any off-air tuner, so it is not a “Television Receiver.”

households are connected to cable or satellite, the hard fact is that *most* consumer displays for video programming do *not* need to be “television receivers” – that is, the displays meet consumer needs without relying on *any* TV tuner, analog or digital, because they receive their programming from a cable, satellite, or other set-top box over non-broadcast interfaces.

Faced with these facts, and with their experience to date under the Commission’s mandate, CERC and the CEA jointly petitioned the Commission for adjustments in its regulations, in order to align them to the extent possible with demand and product cycles. For the “midsize” TV size category, CEA and CERC recommended that the Commission drop its counterproductive 50 percent rule, but *advance* the effective date of its 100 percent rule, from July 1, 2006 to March 1, 2006. We firmly believe that this proposal would advance the DTV Transition by allowing us to better align the Commission’s mandates with supply and demand. Accordingly, we think that the provision in the Staff Draft -- that would not allow the FCC to adjust its Mandate dates in this size category so as to eliminate the counterproductive 50 percent rule -- would result in fewer, rather than more, DTV tuners being distributed to consumers.

We are also very concerned about, and strongly oppose, a new proposal in the Staff Draft, which would move the Mandate date for televisions with screen sizes of 13 through 24 inches *up* by a year. This proposal would damage *both* the transition *and* the least affluent portion of the viewing public.

- First, these sets are *very severely* affected by price considerations. A consumer who buys a \$79 13 inch color television is generally moved by necessity, more than by a search for the most compelling experience. CERC’s general retail members have noted that many of these sets are bought on layaway, by customers who do not have bank accounts. Even semiconductor maker Zoran, which has no retail experience and has made predictions based on assumptions that are at best aggressive and at worst unrealistic, admits that adding a DTV

tuner on the Staff Draft's timeframe *would increase the cost of such a product by "around \$80 – \$100 depending on the brand and model."*³ Having the price of a \$79 color TV go to \$179 by July 1, 2006 would *eviscerate the low end of this product category, punishing the consumers who are least able to afford television receivers.*

- If small TVs become too expensive for their market, the only alternative would be product lines of "receivers" with *no off-air tuners at all*. We have seen this class of "monitor" product emerge already in the large-screen category, even though the DTV tuner is a much smaller component of the cost of a large-screen television. A 22 inch LCD display with no tuner, for example, could be an alternative for a consumer who relies on a cable or satellite set-top box anyway.⁴
- Driving analog tuners out of inexpensive televisions seems especially counterproductive in light of the Staff Draft's expectation that cable operators will convert DTV broadcasts to analog broadcast transmissions at their headends, so that consumers with analog tuner TVs will be served. If TV sets do not have analog tuners, there is no point in converting signals to analog at cable headends. And "basic cable" customers who rely on analog tuners to tune these channels will be sorely surprised when their sets have no place to plug in the cable.
- The Congress, concerned as it is about consumers who must bear the costs of the transition, needs to confront the fact that a low-end TV with only an analog tuner may be the only affordable option for some consumers. To drive these sets out of the market prematurely, by advancing Tuner Mandate dates that double the prices of such sets, is to place the burden of the Transition on those who are least able to afford it.

CERC has not asked that the existing Tuner Mandate dates for 13 inch receivers be pushed *back*. But we think it would be contrary to the legislation's purposes, and very unfair to low income consumers, to try to move them *up*.

³ See Zoran May 16, 2005 *ex parte* letter in FCC Docket No. 05-24.

⁴ We had hoped that prospective inclusion of the "CableCARD" feature, which can be inexpensively added to products with DTV tuners, would heighten their appeal to consumers, but unfortunately these products are not being promoted by the cable industry, and issues have been raised as to their technical support. Of the approximately one million such TV receivers sold to date, only about 40,000 are being served by CableCARDS.

Consumer Subsidies

While the Staff Draft does not address consumer subsidies, CERC is aware that this is an issue under lively discussion. CERC has not presumed to tell the Congress whether there should be such a subsidy or who should be eligible to receive it, but we *do* have concerns over how a subsidy might be applied or administered. Our core concerns are these:

- Ideally, any subsidy should apply to any product, for sale to consumers, with an ATSC (digital off-air) tuner and an antenna terminal. Consumers should have a choice as to which sort of products will serve their marketplace needs. Consumer choice is the best driver of lower prices. However, if the Congress feels constrained, for budgetary purposes, as to the time and scope of the subsidy, it may want to go in the opposite direction, and severely limit the capabilities of products that are eligible for subsidy.⁵
- While various subsidy figures have been floated, Congress should not attempt to fix the prices of real-world products based on the funds available for a subsidy. There are too many variables, including large differences in the projections of costs two years hence, and of the number of households and sets for which there is a demand.⁶
- We believe that any subsidy should flow directly from the government to eligible consumers. Retailers' role in the process should be limited to doing what we do best: providing the best product that fits the consumer's needs and desires.
- CERC would have severe concerns over a subsidy program that would require retailers to advance the subsidy amount to consumers, and to attempt to recover it from the government:
 - Any retailer reimbursement program that would require retailers to carry receivables on our books would need to be a direct obligation of the U.S. government for each sale of a specified product, payable within 60 days of claim and subject to suit for nonpayment.

⁵ For example, if subsidized converter products contain outputs *other* than the familiar "RF" (channel 3 or 4) coaxial output, they would be useful for enabling many pure "monitor" products to receive off-air signals, even though these products have not been relied upon for analog reception. This could expand and prolong the demand for subsidized products, causing the Congress to consider a time and household limitation as to the availability of subsidized products. We prefer to sell multifunction products, but Congress might have a narrower goal.

⁶ There are potential regulatory hurdles, as well. For example, California recently established an energy standard of 8 watts in standby mode for converter boxes. If such state provisions are not pre-empted in the subsidy law they could impede acquisition of products or increase costs.

- Even so, imponderable questions would abound: How to prevent false claims? Would all retailers, no matter how large or small, be audited regularly by the government? How to apply the program to Internet-based merchants; how to find them to audit the *bona fides* of their claims for reimbursement? CERC members are concerned that the opportunities for abuse presented by such a reimbursement program – as to which internal accounting data would be the only evidence of actual sales – would lead either to loss of credibility for *all* claims, or to government and retail auditing costs that are dramatically out of scale to the amounts being claimed. Would eligibility requirements for retailers be imposed? Would attempts be made to artificially set or define retail prices for particular products? Would adequate provision be made for the expenses imposed on retailers?⁷

Several CERC members have been interviewed by, and voiced their views and concerns to, the U.S. Government Accountability Office. CERC can well understand why subsidy issues have proved vexing and controversial. We must caution that difficulties should not be purportedly “solved” via unrealistic assumptions with respect to how programs might operate.

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On behalf of Circuit City and the other members of CERC, I appreciate your invitation to appear today, Mr. Chairman. We will continue to work with the Committee and with the FCC in your effort to add terrestrial broadcasting to those industries that have successfully completed the digital transition.

⁷ CERC would oppose both retailer eligibility requirements and attempts to set or pre-define the retail price of products. Retailers should be reimbursed for their transaction and shipping costs, including the direct and indirect costs of audits – but at present these seem imponderable.